(4)

C.S.1st

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 1936 / 2004

Petitioner : Smt. Rajendra Kaur W/o Sardar Sohendra Singh, aged about 51 years, Devendra Nagar, Raipur – (C.G.)

Versus

Respondents :

1. The Registrar, Co-operative Societies, Raipur (C.G.)

2. The Additional Registrar, Co-operative Societies, Krashak Nagar, Labhandi, Raipur – (C.G.)

3. The Dy.Registrar, Co-operative Societies, Raipur – (C.G.)

4. Shri K. L .Dhargave, Dy. Registrar, Co-operative Societies, Krashak Nagar, Labhandi, Raipur – (C.G.)

5. Shri Umesh Tiwari, Assistant Registrar, (Election Officer), Durg – (C.G.)

6. State of Chhattisgarh through the Secretary Co-operative Department, DKS Bhawan, Raipur-(C.G.)

P. R. No. 1952/04
Presented by Shri ... S.K. Verma
dated ... 3-7-04

RECEIVED COPY
Clerk to A. G. Bilaspur

WRIT PETITION U/A 226 / 227 OF THE CONSTITUTION OF INDIA

1. Particulars of the Petitioner.
As per cause title.

2. Pariculars of the Respondents.
As per cause title.

3. Particulars of the order against which the petition is being filed :
The present petition is not being filed against any particular order but the same is against the illegal and arbitrary action of the respondents by which despite of the declared election programme

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XI-HC-22

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आदेश पत्रक

W.P.1230/02, 1445/02 and 1936/04

मामला क्रमांक ..... सन् ~~200~~

..... विरुद्ध .....

आदेश का दिनांक आदेश सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10-8-2005

Mr. P. Diwaker, Senior Advocate with Mr. Kunal Das, Advocate for the petitioners.

Mr. Yashwant Singh Thakur, Govt. Advocate for the State/respondents No.1 to 3 and 6.

Mr. P.S. Koshy, Advocate for respondent No.4.

Mr. B.D. Guru, Advocate for interveners in W.P.Nos.1230/2002 and 1445/2002.

Heard.

Writ Petition Nos.1230/2002, 1445/2002 and 1936/2004 relate to the same issue, therefore, they are being disposed of by this common order.

I.A.Nos.7790/2002 and 375/2004.

I.A.No.7790/2002 has been filed on behalf of respondent No.4, the Authorized Officer, for clarification/modification of the order dated 5-7-2002.

It is stated in the application that vide order dated 5-7-2002, as an interim measure, this Court directed respondent No.4 not to enroll any new member to the Society. Respondent No.2 appointed respondent No.5 as the Election Officer and the said Election Officer in the meanwhile issued notices and called for the membership list from the Bank. The Bank authorities submitted a list wherein the names of persons who had recently applied for membership are not reflected. On 8-11-2002, the people who are seeking fresh membership filed objections before the Election Officer stating that the Chhattisgarh Co-operative Societies Act, 1960, enumerates that any person who applied for membership and who does not suffer from any disqualification shall be deemed to be members of the said Society from the date they have applied for membership.

(पीछे देखिये)

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is submitted that before 5-7-2002, more than 700 new persons have applied for membership in the Society and they have not been granted membership on account of the interim relief granted by this Court.

Along with the submissions made on behalf of respondents No.1 to 3 and 6 in W.P.No.1445/2002 a list of 703 persons who have applied for membership in the Society has been annexed.

Learned Govt. Advocate submits that out of 703 persons, only two persons have deposited the membership fees and remaining 701 persons have not deposited the membership fees.

Therefore, in such circumstances, there is no question of considering the applications of those 701 persons who have not deposited the membership fees.

Apart from that, learned Senior Advocate for the petitioners argued that even the objection regarding registering those persons as members in the Society was already withdrawn and an application was moved to this effect.

As far as I.A.No.375/2004 filed on behalf of the petitioner for brining subsequent events on record and issuance of directions to the respondents, is concerned, in view of the fact that out of 703 persons, 701 persons have not deposited the membership fees and even the objection raised by 12 persons was withdrawn before the Election Officer, therefore, there is no substance in the application, I.A.No.7790/2002. The said application is accordingly, rejected. However, for the remaining two persons who have already deposited the membership fees, the Authorized Officer is entitled to decide the issue regarding their membership, in accordance with law, after hearing them and the petitioners.

(पीछे देखिये)

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Writ Petition Nos.1230/2002, 1445/2002 and 1936/2004

By Writ Petition Nos.1230/2002 and 1445/2002, the petitioners have questioned the legality, propriety and correctness of the order dated 12-6-2002 (Annexure A-11) passed by the Additional Registrar, Co-operative Societies, Raipur, whereby the Additional Registrar while exercising the power under clause (ii) of sub-section (8) of Section 49 of the Chhattisgarh Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act, 1960'), superseded the Society i.e. Nagarik Sahkari Bank Limited, Raipur, and appointed K.L. Dhargave, Deputy Registrar, Co-operative Societies, as the Authorized Officer. Whereas in W.P.No.1936/2004, it has been prayed to set aside the order dated 9-11-2002, whereby the Election Officer had stayed the election process of the said Society.

Brief facts leading to filing of these writ petitions, as set out in W.P. No.1230/2002, are that elections of the Co-operative Society i.e. Nagarik Sahkari Bank Limited were held in the year 1997 and first meeting of the newly elected Committee was held on 12-4-1997. As per the provisions of sub-section (7-A) of Section 49 of the Act, 1960, the term of the Committee was up to 11-4-2002 i.e. for five years. As the term of the said Committee was to expire on 11-4-2002, in the meeting of the Board of Directors of the Committee held on 11-1-2002, a resolution (Annexure A-1) was passed in which a decision was taken to request the Registrar to hold the elections. Pursuant to the said resolution, the Director along with a copy of the resolution passed by the Board of Directors submitted an application (Annexure A-2) in which a request was made to appoint the Election Officer. Thereupon, the Deputy Registrar vide communication dated 17-1-2002 (Annexure A-3) requested the Registrar to appoint the Election Officer so that elections of the Society could be held. However, no action was taken by the Registrar. The Director again made a

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

request to the Additional Registrar, Co-operative Societies vide communication dated 9-4-2002 (Annexure A-4) to appoint the Election Officer, but no Officer was appointed. Since the request of the Society evoked no response to conduct the elections of the Society, as such, in pursuance of the second proviso to sub-section (8) of Section 49 of the Act, 1960, the Society held a meeting of the Board of Directors on 20th April, 2002 (Annexure A-5) and in the said meeting the Board of Directors appointed the Election Officer namely Mukesh Ramwani, and accordingly, a communication Annexure A-6 was sent to the Deputy Registrar, Co-operative Societies. On receiving this, the very next day, the Additional Registrar, Co-operative Societies vide order dated 23-4-2002 (Annexure A-7) appointed one Umesh Tiwari, Assistant Registrar, Durg, as Election Officer, in view of the second proviso to sub-section (8) of Section 49 of the Act, 1960. Therefore, the Additional Registrar had no jurisdiction to pass the impugned order, hence, the aforesaid order is without jurisdiction, as the respondents have failed to take action within the stipulated period of 90 days. However, the Board of Directors of the Bank agreed to the aforesaid order of appointment of the Election officer and decided that the elections be held by the Election Officer who has been appointed by the Additional Registrar. A resolution was passed and the same was intimated to the Deputy Registrar on 2nd May, 2002 vide Annexure A-8. Thereafter, the Manager of the Nagarik Sahkari Bank Limited made a request to Umesh Tiwari, the Election Officer, vide order dated 1-5-2002 (Annexure A-9) to hold elections of the Society. However, no action was taken and vide communication dated 3-5-2002 (Annexure A-10), a request was made to the Additional Registrar, Co-operative Societies to issue suitable directions to the Election Officer to hold the elections. In the mean time, formalities for elections were completed, and even the final voters list was prepared after completion of the formalities. However,

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 5 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to utter surprise of the petitioner the impugned order dated 12-6-2002 (Annexure A-11) was came to be passed, whereby the Society was superseded on the ground that the Society has failed to make request to the Registrar to hold elections of the Society before 90 days. Therefore, it has been prayed that the impugned order be quashed, the petitioner and other members of the Board of Directors be allowed to continue till the elections are held, and the Election Officer may be directed to hold the elections. The Election Officer started taking steps for holding the elections and the voters list was finalized. The election programme (Annexure A-12) was issued on 25-10-2002, starting from 25.10.2002 and expiring on 8-12-2002, the day when the Chairman & Vice-Chairman and other representatives of the Board were to be elected, but all of a sudden, the Election Officer stayed the election process vide order dated 9-11-2002 (Annexure A-15).

Return has been filed on behalf of the respondents in which a point was raised that the Registrar, Co-operative Societies was not requested before 90 days from the date of expiry of five years term, as the request was made to the Deputy Registrar not to the Registrar.

Mr. P. Diwaker, learned Senior Advocate appearing on behalf of the petitioners argued that in view of the facts mentioned in these writ petition, every steps was taken by the Board of Directors to comply with the provisions of sub-section (7-A) and (8) of Section 49 of the Act, 1960. Even the petitioners in order to ensure that elections are held peacefully, accepted the Election Officer appointed by the Registrar. But, unfortunately, the Election Officer, for the reasons best known to him, without completing elections, in the midst of the election process, to the utter surprise of every one, stopped the election process. As there was no default on the part of the petitioners, the outgoing Board is entitled to continue, till the elections are held.

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On the other hand, Mr. Yashwant Singh Thakur, learned Govt. Advocate appearing on behalf of the State/respondents No.1 to 3 & 6, and Mr. P.S. Koshy, learned counsel appearing on behalf of respondent No.4 argued that the petitioners never requested the Registrar, Co-operative Societies, in terms of sub-section (8) of Section 49 of the Act, 1960, to appoint the Election Officer in order to hold elections. The request was made to the Deputy Registrar and the same was not in conformity with the provisions of the Act, 1960. As such, elections could not be held, and the Registrar was left with no alternative remedy, but to supersede the Board. Therefore, the action taken by the Additional Registrar is strictly in consonance with clause (ii) of sub-section (8) of Section 49 of the Act, 1960.

Having heard learned counsel for the parties, I have perused the record and relevant provisions.

Sub-section (7-A) of Section 49 of the Act, 1960, envisages that "*the term of the committee shall be five years form the date on which first meeting of the committee is held*". Thereafter, a provision has been made under sub-section (7-AA) that the period can be extended upto 36 months. But, in this case, no period was extended. Sub-section (8) (i) of Section 49 of the Act, 1960 envisages that "it shall be obligatory on the outgoing committee of the society to hold elections prior to the expiration of the term under sub-section (7-A) or extended term under sub-section (7-AA). The outgoing committee shall apply to the Registrar for holding election within a reasonable time which shall not be in any case less than ninety days before expiration of the term of the committee". First proviso to sub-section (8) (i) provides that if on the request of the committee the Registrar fails to conduct elections, the Registrar shall not assume charge of the committee and the members of the committee shall continue to hold the offices. Second proviso to sub-section (8) (i) provides that

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"if the Registrar fails to conduct elections of the committee within ninety days from the date of expiry of the term of the committee, the committee of the society shall appoint returning officer who shall conduct the election of the committee within 180 days from the date of the expiry of the term". Clause (ii) of sub-section (8) of Section 49 of the Act, 1960, further envisages that *"if the committee fails to hold election and has not handed over the charge on expiration of the term, under sub-section (7-A) or extended term under sub-section (7-AA) to the Registrar or any officer authorized by him on his behalf, all the members of the committee shall be deemed to have vacated their seats and the Registrar shall assume charge and hold election as early as possible"*.

In view of the above provisions of Section 49 of the Act, 1960, if we look into the documents filed by the petitioners herein, it is evident from Annexure A-1 dated 11-1-2002 that the Board of Directors of the Nagarik Sahkari Bank Limited took a decision that since the term of the Board is expiring on 12-4-2002, therefore, a request be sent to the Registrar, Co-operative Societies for appointment of Election Officer. In pursuance of that, the Chairman sent the resolution to the Deputy Registrar and the Deputy Registrar, in turn, forwarded the said resolution on 17-1-2002 to the Registrar. A reminder was sent by the Chairman on 9-4-2002, but the same evoked no response, therefore, on 20th April, 2002, the Board of Director again met and in agenda item No.9 a decision was taken that since the Registrar has not appointed any Election Officer, therefore, Mukesh Ranwani is appointed as the Election Officer. On receiving this information, Additional Registrar P.R. Naik vide his order dated 23rd April, 2002, appointed Umesh Tiwari, Assistant Registrar, Co-operative Societies (Administration) Durg, as Election Officer (Returning Officer). Even the same was accepted by the petitioners Bank vide its resolution dated 20th April, 2002 and in pursuance of that Umesh Tiwari started the election process, the list of

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voters was finalized and the election programme as mentioned in the earlier part of this order was issued on 25-10-2002 starting from 25-10-2002 ending with 8-12-2002 when the Chairman, Vice-Chairman and other members of the Board were to be elected. However, in the midst of the election process, the said election process was stayed by the Election Officer vide order dated 9-11-2002.

Now, coming to the argument advanced by learned counsel for the respondents that since the request was not made to the Registrar directly and it was made to the Deputy Registrar, therefore, same could not be considered in consonance with the provisions of sub-section (8) of Section 49 of the Act, 1960, I do not find any substance in this argument for the reason that it is evident from the resolution dated 11-1-2002 (Annexure A-1) by which it was decided to make a request to the Registrar, Co-operative Societies, for conducting elections as per the provisions of sub-section (8) of Section 49 of the Act, 1960. It is true that the communication of the said resolution was made to the Deputy Registrar on 12-1-2002, which was received in the Office of the Deputy Registrar on 14-1-2002, from where the Deputy Registrar forwarded the same on 17-1-2002 to the Registrar. This is the internal arrangement, which took time, but the same cannot be considered contrary to the provisions of sub-section (8) of Section 49 of the Act, 1960. Sub-section (8) in clear terms says that "*the outgoing committee shall apply to the Registrar for holding election within a reasonable time which shall not be in any case less than ninety days before expiration of the term of the committee*". Accordingly, the Committee took a decision 90 days before the expiry of their term. Proviso to sub-section (8) envisages that "*if the outgoing committee has resolved and requested the Registrar to hold election at least ninety days in advance and the Registrar has failed to conduct elections on its request, the Registrar shall not assume charge*

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of the committee and the members of the committee shall continue to hold the office". The resolution was passed 90 days prior to the expiry of the term, therefore, the action of the petitioner Society was clearly in consonance with the provisions of sub-section (8) of Section 49 of the Act, 1960. As per the second proviso to sub-section (8), if the Registrar fails to conduct elections of the committee within ninety days on the date of expiry of the term of the committee, the committee of the society shall appoint returning officer who shall conduct the election of the committee within 180 days from the date of the expiry of the term. The committee appointed the Election Officer on 20-4-2002. After coming to know about the same, the Registrar appointed the Election Officer on the next day.

The committee even took steps as per the provisions of sub-section (8) of Section 49 of the Act, 1960, but the Registrar failed to conduct elections. Not only this, when the committee started taking action to hold elections, even that was not allowed by the Registrar and taking advantage of the wrong action taken by him, the Registrar unlawfully superseded the committee. Therefore, in view of the legal provisions and factual aspects of the case, I am of the opinion that the order impugned dated 12-6-2002 has been passed based on the wrong facts and same is liable to be quashed. Accordingly, the impugned order dated 12-6-2002 is quashed.

Now, coming to the other prayer made by the petitioners that the original Board of Directors may be allowed to continue, for this relief, the petitioners are not entitled for the reason that as per the second proviso to sub-section (8) of Section 49 of the Act, 1960, the returning officer is bound to conduct elections within 180 days. Therefore, at the most, the Board can continue for 180 days beyond the date of expiry of its term. Thereafter, under the provisions of clause (ii) of sub-section (8) of Section 49 of the Act, 1960, under the deeming

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provision, the Board has vacated the seat, therefore, almost after three years, it will not be appropriate to direct the respondents to allow the Board to continue.

Since the Election Officer was already appointed and in pursuance of that the election process also commenced, the voters list was also prepared, and the election programme was also issued, therefore, in the circumstances, the Registrar, Co-operative Societies respondent No.1 is directed to ensure that the elections are conducted at the earliest. If the same Returning Officer is in service, then he be allowed to continue with the election process, and if he is not available on account of retirement or for any other reason, then a new Election Officer be appointed and he should conduct elections from the stage where the election was stayed i.e. based on the same voters list which was already finalized by the Election Officer. However, the time schedule of elections be re-issued and elections should be completed by all means within a period of five months from today.

With the observations and directions aforesaid, the above writ petitions stand disposed of.

In view of this order, all the pending applications also stand disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Soma/-

12.10.05
31.8.05

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